

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. On December 16, 2002, the petitioner requested a waiver of his obligation to cooperate in obtaining child support for his son. His application for the waiver stated that pursuing child support would cause serious emotional harm to his son and emotional harm to himself which would reduce his ability to care for his son. He could provide no

documents in support of this application but alleged that the non-custodial parent was hostile towards his recent efforts to collect child support and had made angry calls to his home at 3:00 a.m.

3. The petitioner's application was denied on December 26, 2002, because he did not have sufficient evidence to support his claim. He appealed that decision and was advised at hearing that he needed some documentation of the existence and extent of likely emotional harm from a mental health care professional to prevail in his request. The matter was continued for the petitioner to obtain such evidence.

4. In support of his claim, the petitioner presented the following documentation at hearing:

- a. A statement prepared by him in which he said that a lengthy trial resulting from a child support hearing could harm a family "trying to heal the wounds of the past."
- b. A statement prepared by his mother (with whom he resided for four months) saying that the petitioner and his son have developed a good relationship; that her ex-daughter-in-law had been hostile and harassing since the Vermont Office of Child Support starting proceedings to establish support; that she does not

think an "ugly" custody battle would be good for her son and grandson; and that she fears that her son might lose custody of her grandson after he fought to get custody for thirteen years.

- c. A letter from a mental health provider saying that her agency has had insufficient contact to fully assess the petitioner's or his son's needs or to make a prediction of the likelihood of any future trauma to the child from an attempt to establish a child support obligation from the non-custodial parent.

5. The petitioner presented no evidence regarding the current emotional state or mental health history of himself or his son. Nor did he present any evidence that his son would himself be involved in any proceedings establishing or collecting child support. It cannot be found on the evidence presented, that the petitioner has demonstrated that cooperation in establishing support will result in an emotional impairment that substantially affects either his or his son's ability to function.

ORDER

The decision of PATH denying the request for a waiver from cooperation is affirmed.

REASONS

Any person who receives RUFA benefits automatically assigns his/her rights to child support to PATH and is expected as a condition of eligibility to cooperate in enforcing the right to receive support from the absent parent. W.A.M. 2331 and 2332. The only persons who are excepted from the cooperation requirement are those who can establish "good cause" which is defined in PATH's regulations, in pertinent part, as follows:

. . . Good cause exists when the department determines that cooperation is not in the best interest of the child for whom assistance is requested and is reasonably anticipated to result in any one of the following:

1. Serious physical or emotional harm to the child for whom support is being sought.
2. Physical or emotional harm to the participant parent or caretaker so serious that it reduces the ability to care for the child adequately.

. . .

W.A.M. 2332.1

The Board has noted on several occasions that a determination of "reasonable anticipation of harm" is a

factual decision which must be made on "a case by case basis on the weight, sufficiency and quality of the gathered evidence. See Fair Hearing Nos. 11,046, 11,649, 13,418 and 13,482. The final decision requires a "subjective judgment on the part of the hearing examiner." Bootes v. Cmmr. Of Penn. Dept. of Public Welfare, 439 A.2d 883, 885 (1982). When the criteria for this exception were set by the federal Department of Health and Human Services, it was expected that a waiver would be an exception used in those few extraordinary circumstances where the parent or child faced a risk so real that it would outweigh the emotional, physical and financial benefits of the child's receiving parental support. See 43 Fed.Reg. 2176 (January 16, 1978).

In discussing the evidence necessary to support a request for a waiver, PATH's regulation at W.A.M. 2332.2 includes the following:

Acceptable evidence upon which the department will base a determination of good cause includes but is not limited to, documents such as law enforcement records; court documents; criminal records; birth certificates; medical records; social services, child protective services; or psychological records; records of adoption proceedings; and sworn statements from individuals, other than applicant or participant, with knowledge of the circumstances . . .

Whenever the waiver request is based in whole or in part upon the anticipation of emotional harm to the child, the participant parent, or the caretaker, the present

emotional state and health history of the individual subject to emotional harm must be considered as well as the extent of involvement of the child in the establishment of parentage or support enforcement activity to be undertaken. A finding of good cause for emotional harm may only be based upon a demonstration of an emotional impairment that substantially affects the individual's functioning . . .

W.A.M. 2332.2

It must be concluded that the facts presented by the petitioner in this matter do not meet the test of "reasonable anticipation" of "serious harm" to the custodial parent established in the regulations. This conclusion is not intended to negate the stress or unpleasantness that may well be the petitioner's lot in any attempt to establish and collect child support from a hostile and potentially uncooperative parent. However, the regulations do not protect the custodial parent or even the child from exposure to behavior which may not be beneficial or which may even be harmful to some degree. The regulations represent an attempt to balance negative effects to the parent and child against the important need to establish financial support for the child. The regulations do not contemplate, however, that the parent or child suffer serious harm as the price for the establishment of support. If new or additional facts should develop which show that it is reasonable to anticipate that

serious harm will occur, the petitioner is encouraged to make a new waiver request. As it now stands, it must be concluded that PATH's denial of the petitioner's request for a waiver is based on the evidence and in accord with the above regulations. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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